

DETAILED ACTION

This office action is in response to applicant's amendments and remarks filed on October 25, 2010. Amended claims 21-23 and new claim 24 are under examination. Claims 1-20 are cancelled.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warren (US 4,161,548) in view of Chikako (JP 61-141864), Hansen (US Pat No. 2316861), CFR Title 21 Part 110 (FDA, Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food) and Watanabe et al. (JP 09084482 A, Abstract).**

4. Warren discloses a method of preparing hard cooked eggs with flavoring (col. 1, lines 57-67; col. 2, lines 28-35). Warren discloses a process wherein a partly cooked

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egg with a thin layer of cooked egg white (solidified albumin) surrounds raw yolk (col. 2, lines 7-13; col. 4, claim 1). Warren teaches that the egg is fixedly erected or that the injection hole is formed on the end of the long axis ('548, Figure 1, 3 and 4). Warren teaches holding an egg in a erect position and inserting an needle into the end of the long axis of an egg ('548, figure 1 shows the orientation of the egg and the mixing needle or element 12 above it, the injector is in the form of a needle or syringe with an outer guide to pierce the shell of the egg). Warren teaches that spices ('548, col. 1, lines 56-64) and concentrated flavorings ('548, col. 2, lines 36-41) are injected in the pathway of the needle ('548, col. 4, lines 12-21). Flavorings are considered edible spices. Additionally, it would have been obvious to one of ordinary skill to inject any known flavoring (edible material) whether natural or man made for the purpose of adding desired flavoring to the egg product.

5. Warren is silent on a cleaning and sterilizing step before forming an injection hole. However, it is well known in the art of manufacturing that Good Manufacturing Practice Regulations under the authority of Federal Food, Drug and Cosmetic Act (p. 214-215) to ensure sanitation and cleanliness to minimize or eliminate contamination in raw material food ingredients, such as eggs. Additionally, Watanabe et al. teaches ozone sterilizing an egg with its shell is a known operation to clean eggs ('482, Abstract). It would have been obvious to one of ordinary skill in the art to ensure the raw material or egg is cleaned and ozone sterilized as taught by Watanabe before further processing the raw materials, since it is a known and regulated practice in the food industry.

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6. Warren is silent on the thickness of the cooked egg white (solidified albumen) and amount of pressure exerted on the raw egg as cited in claim 21. However, it would have been obvious to one of ordinary skill in the art to cook egg whites to adjust a desired thickness in Warren's egg process to provide desired solid layer albumen for more stable egg to withstand the piecing of syringe in the egg's shell. Additionally, it would have been obvious to one of ordinary skill in the art to optimize a desired pressure exerted on an egg shell based upon the type of egg and its' shell composition and ability to withstand external pressure application without cracking the shell and keeping the entire egg whole.

7. Warren is silent on removing at least part of the content of raw egg. However, Chikako discloses withdrawing contents including albumin and/or yolk followed by addition of edible material to the egg through a hole in the shell ('864, Abstract). Given the teachings of Chikako as outlined above, it would have been obvious to a person of ordinary skill in the art at the time of invention to have used the injector of Warren to execute the invention of Chikako. The motivation to do so would have been to prepare a boiled egg containing a food material different from the egg components using known techniques and apparatus to perform the steps ('864, Abs.).

8. With respect to claim 21 and 24 and the volume of injected edible composition, the references used herein do not teach how much of an edible composition may or may not be added to the egg shell. However, the methods taught by Warren and Chikako would allow the person of ordinary skill in the art to add as much or as little material as desired. It therefore would have been obvious to one of ordinary skill in the

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art at the time of invention to have added within 10% of the volume of the egg to the egg shell to form an egg that has desirable characteristics such as consistency and flavor.

9. The recited ingredients in claim 24 are known and common ingredients in the art for flavoring or seasoning egg as a matter of personal preference. Additionally, with respect to the amount within 10% of edible materials, such as vitamins, edible pigments, and edible spices to the volume of egg, attention is invited to *In re Levin*, 84 USPQ 232, and the cases cited therein, which are considered pertinent to the fact situation of the instant case, and wherein the Court states on page 234 as follows: This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ221.

10. Warren teaches mixing the injected contents and the interior contents of an egg by shaking but does not say how that it is accomplished ('548, col. 4, lines 12-21). Agitators for mixing the interior contents of an egg are known in the art. Hansen teaches an egg beater which mixes the interior portion of an egg by inserting an agitator

through a hole at the end of the long axis of an egg at which time springs (17) extend from the blade (16) ('861, Figs.1 and 2; col. 2, lines 15-26). It would have been obvious to a person of ordinary skill in the art at the time of invention to have performed the mixing taught by Warren with the agitation taught by Hansen as Hansen clearly teaches an effective agitation technique that allows the contents of the egg within the shell to remain contained therein ('861, col. 1, lines 4-5).

Response to Arguments

11. Applicant's arguments with respect to claim 21-23 have been considered but are moot in view of the new ground(s) of rejection. Applicant has amended to recite the new limitation sterilizing with "ozone", thickness of two to three mm in albumin, and pressure of three to five kg/cm² is exertion in the claims which necessitated the new ground of rejection.

12. Applicant argues the combined features of ozone sterilization, optimal albumen thickness and specific pressure exerted the shell puncture has been developed and secured to overcome the disadvantages of the prior art.

13. Warren, Chikako, and Hansen clearly teach a method of manufacturing a processed raw egg having an edible composition as discussed above. Warren, Chikako, and Hansen are silent regarding a cleaning and sterilizing step before forming an injection hole. However Watanabe et al. is relied upon for teaching ozone sterilizing an egg with its shell and teaches this is a known operation to clean eggs ('482, Abstract). It would have been obvious to one of ordinary skill in the art to ensure the raw material or egg is cleaned and ozone sterilized as taught by Watanabe before further

processing the raw materials, since it is a known and regulated practice in the food industry.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HONG MEHTA whose telephone number is (571)270-7093. The examiner can normally be reached on Monday thru Thursday, from 7:30 am to 4:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Htm

/Jennifer C McNeil/
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